

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
DONALD T. TOMLINSON,)
Appellant,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
Respondent.)

PCHB No. 548

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$100.00 civil penalty under
RCW 90.48.144, for an alleged violation of RCW 90.48.080; having come
on regularly for hearing before William E. Cullen, Jr., hearing examiner,
on the 6th day of August, 1974, at Pasco, Washington; and appellant,
Donald T. Tomlinson, appearing pro se and respondent, Department of
Ecology, appearing through its attorney, Wick Dufford, Assistant Attorney
General; and the Board having read the transcript, examined the exhibits,
records and files herein and having entered on the 6th day of December,
1974, its proposed Findings of Fact, Conclusions of Law and Order,

1 and the Board having served said proposed Findings, Conclusions and
2 Order upon all parties herein by certified mail, return receipt
3 requested and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusions and Order; and the Board being fully advised in the premises;
6 now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order, dated the 6th day of
9 December, 1974, and incorporated by this reference herein and attached
10 hereto as Exhibit A, are adopted and hereby entered as the Board's
11 Final Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 7th day of January, 1975.

13 POLLUTION CONTROL HEARINGS BOARD

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15 Walt Woodward
16 WALT WOODWARD, Chairman

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18 Chris Smith
19 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 8th day of January, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Donald T. Tomlinson
Route 2, Box 224
Walla Walla, Washington 99362

Mr. Wick Dufford
Assistant Attorney General
Department of Ecology
St. Martin's College
Olympia, Washington 98504

Mr. Lloyd K. Taylor
Department of Ecology
St. Martin's College
Olympia, Washington 98504

LaRene Barlin
LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

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DONALD T. TOMLINSON,)
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Appellant,)
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v.)
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STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
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Respondent.)

PCRB No. 548

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100.00 civil penalty under RCW 90.48.144, for an alleged violation of RCW 90.48.080 was heard at a hearing before William E. Cullen, Jr., hearing examiner, in the District Court jury room of the Franklin County Courthouse, Pasco, Washington, on August 6, 1974.

Appellant, Donald T. Tomlinson, appeared pro se. The State of Washington, Department of Ecology, appeared through its attorney, Wick Dufford, Assistant Attorney General.

Having reviewed the transcript and examined the exhibits, the Pollution Control Hearings Board makes these:

FINDINGS OF FACT

I.

John Hodgson, Water Pollution Inspector for the Department of Ecology, State of Washington, received a complaint from a Cecil Johnson in December of 1972 regarding manure in Cold Creek in Walla Walla County, Washington. In January of 1973, Hodgson inspected the operation of the dairy farm operated by appellant adjacent to the stream. At that time, Hodgson observed that Cold Creek contained a considerable amount of manure waste solids and the water was discolored, and its quality seemed to be degraded. Hodgson further observed that the Tomlinson barn was near the stream and that the ground sloped towards the stream; wastes at that time were hydraulically cleaned from the milking parlor and the barn and drained to the stream. Hodgson advised Tomlinson of the requirements of the Pollution Control Law and sometime later sent him a copy of the guidelines. Hodgson also inspected the settling pond of Johnson downstream from the Tomlinson dairy and found that the settling pond was full of manure solids.

Hodgson recommended to Tomlinson that access of the animals to the creek should be limited and that drainage from the barnyard area should be controlled and not allowed to enter the stream. There were several other visits to the dairy and contacts with Tomlinson by Hodgson during the summer of 1973. (See State's Exhibits 4, 5 and 6) As a result of these visits, Tomlinson did make some improvements including installation of a culvert and preparations to dry-clean rather than hydraulically clean the barn and milking parlor.

II.

In late November, a complaint from Edward Harding was received by the Department of Ecology. Hodgson again visited the Tomlinson dairy on December 18, 1973, pursuant to that complaint. Hodgson noticed several improvements including the installation of a watering trough. At the time of the visit, an employee of Tomlinson was using a hose to wash the waste solids from the barn, which solids were running into the creek. The culvert which had been installed by Tomlinson was not sufficient to prevent the run-off from going into the creek. Hodgson observed a substantial amount of manure solids accumulated along the bank of the creek and in the settling basin on the Harding place downstream from the dairy. Hodgson informed Tomlinson that the same situation essentially existed as had existed at the time of the first inspection in that waste solids were still being allowed to run into the stream. Hodgson informed Tomlinson that enforcement action could ensue.

III.

Harding, who operated the farm adjacent to and immediately downstream from the Tomlinson dairy, testified that because of the manure solids he was unable to operate his irrigation pumps and that the stench from the manure solids was great.

IV.

Howard Bunten, Environmental Inspector with the Department of Ecology, visited the Tomlinson dairy on April 10, 1974. He found that there was evidence of considerable animal waste in the waterway. Bunten found that the culvert was too short to correct the problem of animal waste washing into the creek. Bunten again visited the Tomlinson dairy on June 26 and

1 found that some additional culvert had been installed but still not
2 sufficient to protect the stream from run-off from the holding area. He
3 later discussed the situation over the phone with Tomlinson. Again on
4 August 5 Bunten visited and found no further work had been done since his
5 June 26 visit. Bunten found that the installation at the Tomlinson
6 dairy was sufficient to protect the creek during dry weather from the
7 introduction of animal waste, but stated that with a substantial rain
8 fall there would be loss of animal waste into the stream.

9 V.

10 Roland Pine, Supervisor of Water Quality Investigation with the
11 Department of Ecology, testified that substantial cattle waste present in
12 Cold Creek would pollute the creek and would degrade the water quality.

13 VI.

14 On February 19, 1974, the Department served notice of a \$100.00 civil
15 penalty on appellant, citing chapter 90.48.144 RCW. That penalty is the
16 subject of this appeal.

17 VII.

18 Any Conclusion of Law hereinafter recited which should be deemed a
19 Finding of Fact is hereby adopted as such.

20 From these Findings, the Pollution Control Hearings Board comes to
21 these

22 CONCLUSIONS OF LAW

23 I.

24 The obligation to prevent animal waste discharge from entering the
25 waters of the state, in particular in this case Cold Creek, is that of
26 Donald T. Tomlinson, operator of the dairy farm adjacent to the creek.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 II.

2 Donald T. Tomlinson has been negligent in failing to prevent animal
3 waste from entering Cold Creek by directly washing animal waste into Cold
4 Creek and by failing to construct and maintain adequate culverts and other
5 steps to prevent the discharge of animal waste into the creek. This
6 failure has allowed animal waste to enter the creek and to pollute and
7 degrade the water of Cold Creek.

8 III.

9 The penalty, being only two percent of the maximum allowable amount,
10 is appropriate considering that Tomlinson has made some effort to prevent
11 animal waste from reaching the water and considering that he has plans to
12 take additional steps.

13 IV.

14 Any Finding of Fact that should be a Conclusion of Law is hereby
15 adopted as such.

16 Accordingly, it is the Board's

17 ORDER

18 The Order of the Department of Ecology assessing a penalty of
19 \$100.00 against Donald T. Tomlinson for allowing discharge of animal
20 waste into the public waters of the State of Washington is affirmed.

21 DONE at Lacey, Washington this 6th day of December, 1974.

22 POLLUTION CONTROL HEARINGS BOARD

23 Walt Woodward
24 WALT WOODWARD, Chairman

25 Chris Smith
26 CHRIS SMITH, Member

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER